CMPMO No.395 of 2004.

20.6.2006. **Present:** **Mr. Tarlok Chauhan, Advocate, for the petitioner.**

Mr. Naveen Bhardwaj, Advocate, vice Counsel for respondent no.1.

Mr. Ajay Kumar, Advocate, vice Counsel for respondent No.7.

With the consent of the learned counsel for the parties, this petition itself is taken up for consideration, hearing and final disposal today.

In this petition, the petitioner has challenged the legality and the correctness of the order dated 20th September, 2004 whereby the application of respondent No.1 filed under Order 23 Rule 1 of the Code of Civil Procedure for withdrawal of the suit with permission to file a fresh suit on the same cause of action has been allowed by the learned Court below. Learned counsel for the parties submit and agree that the impugned order be set aside but with liberty to respondent No.1 - plaintiff to file a fresh suit on the basis of a cause of action which has nothing to do with the pending suit in which the impugned order was passed. Also that the plaintiff - respondent No.1 be reserved the liberty to file

appropriate applications in the trial Court in the pending suit for amendment of the plaint, for impleadment of additional parties and for filing of additional documents.

This petition is allowed. The impugned order dated 20th September, 2004 is set aside with all the consequences and with the result that the suit in which the impugned order was passed shall stand revived and restored to its original position.

In so far as the liberties sought for by the plaintiff – respondent No.1 are concerned, I order and direct that as far as the filing of the fresh suit with respect to another property on the basis of a cause of action which has no nexus or link with the pending suit, it shall be at the risk and responsibility of the plaintiff – respondent No.1 and it shall also be subject to all exceptions, including the exception relating to the maintainability of the new suit (to be filed), as well as the limitation aspect. It goes without saying that in the said new suit to be filed, the defendants (to be impleaded in that suit) would have also all the

liberties to contest the suit on its merits. In so far as the liberty regarding the filing of the applications in the trial Court in the pending suit is concerned, even though the plaintiff – respondent No.1 may file the applications, all such applications if filed shall be disposed of on their merits and strictly in accordance with law, totally uninfluenced by this order in any manner. As a consequence of the passing of this order, the plaintiff – respondent No.1 hereby undertakes to withdraw the subsequent suit, being Civil Suit No.149 of 2004 which he had filed as a consequence of the permission granted vide the impugned order.

Record be sent back to the trial Court where the parties through their learned counsel are directed to appear on 3rd August, 2006.

CMP No.153 of 2006.

In view of the order passed in the main matter, this application is disposed. Interim order dated 28th March, 2006 shall stand vacated.

20th June, 2006. (V.K. Gupta), C.J.
(tr)